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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,728	09/08/2003	Donald J. Gagne	7175-74151	8915
23643	7590	03/06/2007	EXAMINER	
BARNES & THORNBURG LLP 11 SOUTH MERIDIAN INDIANAPOLIS, IN 46204			DEMILLE, DANTON D	
		ART UNIT	PAPER NUMBER	
		3771		
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	03/06/2007	PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/657,728	GAGNE, DONALD J.	
	Examiner Danton DeMille	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 20 December 2006.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-37 and 39-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 21-34 and 39-43 is/are allowed.
- 6) Claim(s) 1-20 and 35-37 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

**Claim 1 remains rejected under 35 U.S.C. 102(b) as being clearly anticipated by Napiorkowski et al.**

Napiorkowski teaches a grommet made out flexible rubber-like material (column 3, lines 13-15), that can be inserted in an aperture of any object to allow conduits (column 1, line 20) to enter or exit the device. Figures 12-13 show and embodiment in which the grommet as an elastic sheet with a first slot 90, 92 within the sheet dimensioned to form an airtight seal around an outer surface of a hose if a hose where inserted through the slot in a direction generally parallel to the sheet. While Napiorkowski may not teach inserting a hose generally parallel to the plane of the grommet a hose is nevertheless capable of being inserted through the slot at an angle that is generally parallel to the plane of the grommet as compared to inserting the hose perpendicularly through the grommet. With the slot 90, 92 running vertically as shown in figure 13, a hose inserted at the very bottom of the slot where the radiating slits are located, and inserted at an angle upwardly out through the top of the slot 90, 92 near the numeral 86, the hose would appear to be "generally parallel" to the plane of the grommet. Because the slot has a length, a hose could be inserted through the slot beginning at the bottom of the slot and exiting the top of the slot on the other side. This would angle the hose in generally parallel to the plane of the grommet as opposed to the conventional perpendicular method of inserting the hose. There appears to be no clear structural limitation recited to define over the prior art other than to merely describe "the elastic sheet being deformable to allow the hose to be inserted through the slot in a direction

generally parallel to the plane defined by the sheet in the flat configuration.” Broadly, it would appear Napiorkowski teaches all of the claimed limitations that are positively recited.

**Claims 1-6 remain rejected under 35 U.S.C. 102(b) as being clearly anticipated by Webb et al.**

Webb teaches an elastic sheet 1 of rubber (line 22) forming a portion of a wall of a device. There is a first slot 4 that allows conduits to pass through the slot if inserted a direction generally parallel to the sheet. As noted above to Napiorkowski, because of the length of the slot a hose is capable of being inserted at an angle generally parallel to the elastic sheet from the far left side of the slot as shown in figure 1 through the slot and exiting the far right side of the slot. This would appear to comprehend the claimed limitation of the elastic sheet being deformable to allow the hose to be inserted at such an angle.

The slot of Webb also includes first and second holes at the ends of the slots as shown in figure 3. It would appear that the holes would also include finger grips because fingertips could be placed on opposite sides of the hole to help pry the upper and lower portions of the sheet apart to insert the conduit. Regarding claim 4, it could also be said that the device includes a plurality of slots between adjacent holes with adjacent holes including finger tip grips for prying the slot apart for inserting the conduit.

**Claims 1-6 remain rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hasson et al.**

Hasson teaches a foam or other sponge-like material 272, figure 21, column 11, lines 1-8, with good memory with a first slot within the sheet dimensioned to form an airtight seal around an outer surface of a hose if inserted through the slot in a direction generally parallel to the sheet.

As noted above, a hose inserted in one hole at one far end of the slot and exiting the hole at the opposite end of the slot would appear to comprehend the claimed deformability and would extend through the elastic sheet generally parallel to the plane of the elastic sheet. Since the bladder and hose are not part of the claimed combination it is not clear how much weight can be given some of the claim language however it would appear the sheet could be formed in a portion of a wall of an inflatable bladder.

***Claim Rejections - 35 USC § 103***

**Claims 2-20 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Napiorkowski et al. in view of Hasson et al.**

Napiorkowski teaches in the embodiment of figures 12 and 13, “[h]owever, it will be understood by those skilled in the art that any of the embodiments of the present invention may be adapted such that the wires may be dropped into the grommet rather than inserted through one or more apertures in the central portion or section of the grommet” (column 5, lines 29- column 6, line 1). This would appear to teach that the other disclosed embodiments could be modified to include the slot shown in figure 13 so the conduit can be dropped into the grommet.

Napiorkowski also teaches that the slot could be used rather than inserted through one or more apertures in the central portion of the grommet. This would suggest that the central portion of the previous embodiments can also include one or more apertures. The previous embodiments include crease lines facilitating tearing upon the insertion of the conduit. The end results would be a grommet that includes a slit within the sheet of elastic material.

Hasson teaches a similar seal that includes holes at the ends of the slot in figure 21. It would have been obvious to one of ordinary skill in the art to modify Napiorkowski to include holes at the end of a slot as taught by Hasson to increase the flexibility of the slot.

Regarding claims 9-17, the specific dimensions or hardness rating of the elastic is well within the realm of the artisan of ordinary skill dependent on practical considerations of intended use. The claims appear to be drawn to a generic connector for connection between an inflatable bladder and a hose. No specific use is positively claimed and therefore these details do not appear to be critical to the device.

**Claims 35, 36, 37 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen et al. in view of Napiorkowski et al.**

Hansen teaches a chest compression vest with a front panel, an air bladder on the inner surface of the front panel and a belt connected to the front panel for secure the vest. A connector 60 is taught for connecting the air bladder to a hose however the details of the connector are not provided. Napiorkowski teaches an elastic connector for allowing conduits to pass therethrough. It would have been obvious to one of ordinary skill in the art to modify Hansen to use a connector as taught by Napiorkowski to allow the conduit to pass therethrough as taught by Napiorkowski as a means sealingly connect the conduit to the bladder. Napiorkowski shows the slot can comprise a plurality of slots. The vest can lay flat and therefore is efficient for storage.

***Allowable Subject Matter***

**Claims 21-34, 39-43 are allowable over prior art to which the examiner is aware.**

***Response to Arguments***

Applicant's arguments filed 20 December 2006 have been fully considered but they are not persuasive.

Applicant argues that Napiorkowski, as well as other prior art, does not show hoses extending through any slots in a direction generally parallel to the plane of the elastic sheet. The prior art does not have to show such an intended use function. One of ordinary skill in the art would know that this would be possible. One of ordinary skill in the art would know that one would be able to insert a hose through the slot at an angle that is generally parallel to the plane of the elastic sheet. Claiming that the elastic sheet is deformable to allow a hose to be inserted at an angle generally parallel to the plane of the elastic sheet is a recitation of the intended use of the claimed invention. The hose is not part of the claimed invention but merely intended to be inserted through the elastic sheet during use. The functional intended use language must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Regarding claims 2-20, applicant argues that neither Napiorkowski nor Hasson teach the thermoplastic elastomer sheet having a generally flat configuration. First of all Napiorkowski teaches using many different materials including thermoplastic elastomers in column 4, line 65. Second of all the grommet of figure 13 is formed of a generally flat configuration with the slot in the center section.

The same would apply to claims 18, 35, 36, 27-32 and 34.

*Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974. The examiner can normally be reached on M-F from 8:30 to 6:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu, can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

2 March 2007



Danton DeMille  
Primary Examiner  
Art Unit 3771